IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE
WRIT PETITION NO. 6313 OF 2005

The State of Maharashtra and anr. ... Petitioners

Versus

Shri. Raghunath Eknath Mundhe ... Respondents

Mr. N.P. Deshpande, A.G.P. for Petitioners.

Mr. P.N. Chavan for Respondents.

CORAM : F.I. REBELLO &
DR. D.Y. CHANDRACHUD,JJ.
DATED : 30TH SEPTEMBER, 2005

P.C.

. Rule. Heard forthwith.

. The Respondent has been suspended in the proceedings arising from an A.C.B. case from 29.4.2003. The chargesheet was filed on 27.7.2004. The Review Committee met on 15.8.2004 and decided not to review the order of suspension.

. The Petitioner approached the Maharashtra Administrative Tribunal by filing Original Application No. 333 of 2005. By order dated 16.8.2005 the learned tribunal was pleased to allow the application and direct the respondents therein to reinstate the applicant within the period of three weeks from the date of the order and post him in a non executive post till criminal case is

finally decided. It is this order which is subject matter of the present petition at the instance of the State.

. There is no dispute that the chargesheet has been filed against the Petitioner. The question is whether courts and or Tribunal in the matter of suspension should interfere with the orders passed by the Disciplinary authority. In the normal course, it is the disciplinary authority who is the best Judge as to whether the person should be continued in suspension or not. If the delinquent is suspended, it is open to the disciplinary authority to review the order of suspension. In that context, the court can only exercise its powers of interference in a limited number of cases where it is shown that the decision to suspend is arbitrary and or is a mala fide exercise of power and or colourable exercise of power and or the State or the authorities are not able to explain the reasons for suspension when it is for a unduly long period and adequate reasons are not forthcoming for the order of suspension. These must be the parameters on which every authority including M.A.T. must consider whilst dealing with an order of suspension more so in the cases of delinquent employees who hold the sensitive posts

under Police services and such other services. It is not for the courts including the tribunal to interfere with exercise of discretion by the disciplinary authority otherwise than in circumstances set out. We are coming across large number of matters, where the tribunal is interfering with the orders of suspension issued by the disciplinary authority merely on the ground that the chargesheet have not been issued and or that that some time has elapsed from the date of suspension. We must express our unhappiness with the approach of the tribunal in such matters.

. We also fail to understand as to why disciplinary authority does not proceed to issue chargesheet and commence the process for the domestic enquiry. Law is settled, that it is open to the disciplinary authority even when a criminal case is pending to initiate disciplinary proceedings. It is for the delinquent, if aggrieved, to move competent court and it is for that court to consider whether the enquiry should be stayed or not. In these circumstances, we direct respondents State to proceed according to Law considering the tests which have to be applied in domestic enquiry which tests are distinct from the tests which have to be followed in a criminal

proceeding.

. For all the aforesaid reasons, we find that the impugned order has to be interfered with. Accordingly, we quash and set aside the order dated 16.8.2005 and restore the order of suspension as imposed by the petitioners herein.

. We make it clear that by this order it does not mean that the respondents cannot represent against the suspension. It is always open to the respondents to represent and for disciplinary authority to consider whether the order of suspension should be reviewed or not.

. Rule made absolute accordingly. No order as to costs.

(F.I. REBELLO,J.)

(DR. D.Y. CHANDRACHUD,J.)